

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:10-cr-522
5 Plaintiff, - Toledo, Ohio
6 v. - June 18, 2012
7 ALEX DAVID COOK, - Sentencing
8 Defendant. -

9
10 TRANSCRIPT OF SENTENCING HEARING
11 BEFORE THE HONORABLE JAMES G. CARR
12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

14 For the Plaintiffs: United States Attorneys' Office
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23 Proceedings recorded by mechanical stenography,
24 transcript produced by notereading.
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1 (Commenced at 11:25 p.m.)

2 THE CLERK: Case number 3:10-CR-522, United
3 States of America versus Alex David Cook. Matter called
4 for sentencing.

5 THE COURT: The defendant is present in
6 court with his attorney, Ms. Elizabeth Kelley. The
7 government is represented by Gene Crawford and Tom
8 Secor, Assistant United States Attorneys. Also present
9 is Shawna Sizemore, U.S. Pretrial Service and Probation
10 officer.

11 Counsel, did you receive and review the
12 presentence report? If so, do you have any objections?
13 If not, are you prepared to proceed with sentencing?

14 MS. KELLEY: Yes, we received it; we
15 reviewed it, and we do not have any objections.

16 THE COURT: Mr. Crawford?

17 MR. CRAWFORD: Your Honor, the government
18 has received the report, reviewed it, and we do not have
19 any objections.

20 THE COURT: Mr. Cook, did you read the
21 presentence report?

22 THE DEFENDANT: Yes. Yes, Your Honor.

23 THE COURT: And did you understand what it
24 says and what it means?

25 THE DEFENDANT: I do believe so, Your Honor.

1 THE COURT: And did Ms. Kelley go over it
2 with you and answer any questions that you might have
3 had?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And are you satisfied that she
6 has represented you dutifully and diligently and given
7 you and your case enough time and attention throughout
8 the entire course of the proceedings during which she's
9 been your attorney?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And that she's prepared both
12 yourself and herself adequately for each stage of the
13 proceedings?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. There are a couple of
16 motions. I've read the sentencing memorandum; I've read
17 the letters submitted on behalf of the defendant.
18 There's a motion with respect to the computer; is that
19 correct?

20 MS. KELLEY: Yes, it is, Your Honor.

21 THE COURT: And as I indicated in chambers,
22 I'm going to deny that motion without prejudice to renew
23 in the event of a postconviction relief petition. I
24 believe that the request rather than being based on
25 something newly discovered or something newly learned

1 about technology or whatever, that it encompasses an
2 inquiry that either has been adequately undertaken or,
3 to the extent that it may not have been, could have been
4 undertaken or certainly could have been raised as a
5 concern for before trial. As I say, that's without
6 prejudice.

7 I think that's the only pending motion; is
8 that correct?

9 MS. KELLEY: And I also filed a motion for
10 bond pending appeal.

11 THE COURT: Of course. Oh, no, we'll have
12 to talk about that.

13 The government, have you seen that motion?
14 And if so --

15 MR. CRAWFORD: Your Honor, we've seen the
16 motion. We wouldn't have any objection to
17 self-surrender, but I understand appellate bond is
18 something different. I understand they're going to have
19 an appeal; I understand they're going to have issues
20 raised on appeal. Whether they can meet the high burden
21 of showing the likelihood of success on retrial, I don't
22 think that showing's been made. I don't know that it's
23 been attempted to be made.

24 THE COURT: I'll set a date before which
25 he's not to self-surrender sufficient to enable you to

1 file a written response so that I can then rule on that.

2 MS. KELLEY: And in turn would I have an
3 opportunity to respond to that?

4 THE COURT: Yes. In fact, why don't you
5 respond by July 2, and Ms. Kelley, you respond by July
6 15. And I'll make the self-surrender date not earlier
7 than September 1 or whatever the Monday -- the Tuesday
8 after Labor Day is. And, of course, the same conditions
9 of release will maintain.

10 To confirm the guideline range, the total
11 offense level is 35, criminal history category of I. As
12 to Counts 1 and 2 the guideline range is 168 to 210
13 months. As to Count 3 it's 120 months. As to Counts 1
14 and 2 there's a mandatory minimum of five years or 60
15 months. Would you agree, Mr. Crawford?

16 MR. CRAWFORD: Yes, Your Honor.

17 THE COURT: Ms. Kelley, would you agree with
18 those guideline ranges?

19 MS. KELLEY: Yes, Your Honor.

20 THE COURT: Anything on behalf of the
21 government?

22 MR. CRAWFORD: Your Honor, briefly, I point
23 out that in talking to Mr. Secor and others, I think
24 this is the first internet child pornography case that
25 we've had in this divisions, perhaps ever, and the Court

1 sat through the case. The jurors sat through the case;
2 they saw the evidence. They saw what we can all agree
3 is the unimaginable abuse that occurred to the victims
4 in order to make this pornography. And yet we had the
5 trial, which is certainly Mr. Cook's right, but he
6 denied responsibility for it. The jury didn't believe
7 him. He continues to deny responsibility today. The
8 Court has before it the information in the sentencing
9 report. And we would rely on the Court's discretion to
10 impose an appropriate sentence in this case.

11 With respect to supervised release, we
12 recommend a sentence of approximately ten years of
13 supervised release which would more or less represent
14 the balance between a mandatory minimum and what the
15 guideline sentence would be, assuming the Court does not
16 impose a guideline sentence.

17 THE COURT: Ms. Kelley, on behalf of your
18 client? And as I indicated in chambers, I'm inclined to
19 vary significantly from the guideline range and impose a
20 term around 72 months. That's somewhat higher than the
21 minimum mandatory. To anticipate my reasons, if that's
22 what I do -- of course, I haven't heard from you or your
23 client, but I want you both to know that's what's on my
24 mind. That certainly imposing a guideline sentence is
25 not on my mind. It's far more severe than it is

1 sufficient to accomplish the purposes of sentencing.
2 But I'd have to take into consideration lack of
3 acceptance, which has already been computed into the
4 base offense level, and the fact he we went to trial.
5 And quite candidly, I didn't believe his testimony.

6 I want you to know that's on my mind. It's
7 certainly not to impose, never has been, to impose a
8 guideline sentence. At one point I think -- Ms.
9 Sizemore can confirm this, or Mr. Secor or Mr.
10 Crawford -- I had understood and was appalled by the
11 process; it was a 15-year mandatory minimum. I was
12 relieved to learn that it was substantially less than
13 that. And I will say that if it were not a minimum
14 mandatory term, I would think of something below that as
15 being appropriate. But under all the circumstances,
16 that's where I am in the thoughts about the sentencing
17 having prepared myself for today's proceeding.

18 So that being said, first on behalf of your
19 client, then I'll ask Mr. Cook to speak before I
20 proceed.

21 MS. KELLEY: Thank you, Your Honor. A
22 number of points I would like to address. First of all,
23 in terms of sentencing, as you noted, I submitted a
24 detailed sentencing memorandum. I know the Court has
25 read it, studied it, and reflected upon it. And as the

1 Court noted, a guideline sentence of 14 to 17 and a half
2 years would be not only unreasonable but unconscionable.
3 In the sentencing memorandum we asked this Court to
4 administer a variance of that sentence and to give Alex
5 the minimum mandatory of five years. That, we firmly
6 believe, would be sufficient but not greater than what
7 is needed to fulfill the purposes of the 3553(a)
8 factors. In particular, as this Court learned during
9 the trial, as this Court has learned during the pendency
10 of postconviction proceedings, Mr. Cook has no prior
11 criminal record and indeed up until the moment that he
12 was indicted he enjoyed a sterling reputation in his
13 community.

14 THE COURT: Still does, from many people.

15 MS. KELLEY: As this Court remembers, every
16 single day during the trial the courtroom was packed,
17 and many of those people submitted letters, which I
18 attached to the sentencing memorandum. Many of those
19 same people are gathered here in the courtroom today.
20 Also, as I put forth in the sentencing memorandum, Mr.
21 Cook poses no danger whatsoever --

22 THE COURT: I agree.

23 MS. KELLEY: -- to the community.

24 Thank you, then I'll move on.

25 THE COURT: And the likelihood that he's a

1 danger to young children, which is always a concern,
2 appears to be very slight, if existent at all. I'm
3 taking that into account --

4 MS. KELLEY: I appreciate that.

5 THE COURT: -- in fashioning my sentence.

6 MS. KELLEY: Alex is extremely nervous
7 today. He would like to address the Court, but in order
8 that his thoughts are cogent, he gave me a letter which
9 I would like to read to the Court, if I may.

10 THE COURT: Okay.

11 MS. KELLEY: Your Honor, I just wanted to
12 say that I came here today with a heavy heart. I also
13 want to say that I respect Your Honor and the jury
14 system of our country. Because I have that respect for
15 Your Honor and the jury system, I could not and cannot
16 now come into this Court and lie and say that I did
17 something that I know in my heart and soul I did not do.
18 I will also say that my intent is to appeal this
19 conviction and clear my name. I deeply respect and
20 thank Your Honor for all of the mercy you have shown me.
21 I would also ask for your compassion and leniency at
22 this time.

23 Also, if the Court pleases, Mr. Jerry Cook,
24 Alex's father, would like to address this Court.

25 THE COURT: Okay.

1 MS. KELLEY: And before he does, I would
2 like to touch upon two matters.

3 First of all, for purposes of the record, I
4 would like to address the motion to inspect the
5 computer. I would like to assure the Court that I did
6 not file that motion in bad faith. And I did it out of
7 a well-founded belief that indeed this was important and
8 could be dispositive. I was contacted by Mark Vassel,
9 our computer expert, several weeks ago who thought of
10 yet another thing that should be done in terms of the
11 inspection. I said to him, I said, you had opportunity
12 back when this case was going to trial. You had
13 opportunity earlier this spring in advance of our new
14 trial motion. Why did you not think of it? And he
15 said that this case had deeply troubled him, and he had
16 done some additional research into the issue of context.
17 And he addresses those points in subpoints 8 until the
18 end of his affidavit. I told him that he was welcome to
19 explore that; however, he needed to contact the Toledo
20 PD and get permission to inspect. They denied that
21 permission to inspect, and they told him that Mr. Cook's
22 attorney, that is to say me, would need to -- I would
23 need to file a copy or a motion with the Court
24 requesting permission. I asked Mr. Vassel to produce an
25 affidavit, which he did last Thursday. And I promptly

1 filed that motion. And I believe Mr. Cook is going to
2 address a little bit more in particularity that
3 particular issue. And with that in mind, we will now
4 hear from Mr. Cook.

5 THE COURT: Okay.

6 MR. JERRY COOK: Forgive me, Your Honor. I
7 am nervous. We have never been in a situation like this
8 before. We've been in a court for minor traffic
9 accidents. That was it.

10 When this hit, it was devastating. We
11 didn't know what to do. We trusted our system, and we
12 trusted the public defender's office. And I think
13 there's some misconception what I read in documentation
14 that for some reason, because we changed lawyers so
15 late, that we were trying to pull a fast one and
16 mislead, and that was never our intent.

17 THE COURT: I understand that.

18 MR. JERRY COOK: You don't believe that.

19 But we came in June of last year -- late
20 June, early July. And we found out that our public
21 defender, after she told Alex to go to his court
22 appointed psychologist, and get him to convince Alex
23 that he did this, and that she would come and talk to
24 our pastor and get him to convince Alex that he did
25 this, that we knew she was not going to represent Alex.

1 And she further called that out when we asked her about
2 computer forensics that she supposedly did with the
3 computer forensic guy; didn't have the right computer
4 name, type of computer. We knew we had to do something.
5 So at that point we started looking for a new lawyer.
6 We live approximately two and half, three hours from
7 here. Our town doesn't even have a criminal lawyer. We
8 went to a nearby town, Mount Vernon, and tried to find
9 somebody to represent in federal court. We found out
10 through the process that there's actually different
11 districts. We never knew that. And a lawyer down there
12 couldn't try up here. So we went out on a search in
13 July to try -- mid July to try to find a lawyer up here,
14 and we found Ms. Kelley around the latter part of the
15 first week, the second week of August with the trial
16 beginning September 6.

17 At that time we interviewed her, we
18 interviewed several other lawyers. We chose Ms. Kelley.
19 And at that time we never had a concern that she would
20 never be adequately prepared. She did her best. But I
21 think in this type of a trial, Alex said that she just
22 could not be prepared in less than three weeks before we
23 come before a trial of this magnitude.

24 At that same time we had to go find a
25 computer forensic individual, and we found a gentleman

1 over in the Cleveland area, Mark Vassel. At that time
2 he tried to get access, and it took him a week and a
3 half to two weeks to get access. So now we're less than
4 a week before trial, and he has basically one day to
5 investigate that computer and look at that computer.

6 And since this has happened, I've looked and
7 watched this intently in the media. There's a case in
8 Mansfield, Ohio right now at the state level. In the
9 paper the government says they take minimally 30 days to
10 look at this. We had less than a week for our computer
11 expert to do the evaluation. And he had to come to
12 Toledo to do that. So he does not have enough time to
13 even really thoroughly look at the computer to present
14 that at trial. And I believe in my heart that's a
15 disservice to not only Alex, but the justice system when
16 that can happen. And these things happen. We
17 understand that. But I think what's more disturbing
18 about this whole thing is Alex's story has not changed
19 one iota. He came to me and said what was going on.
20 And in my mind I cannot believe anything could happen
21 that he'd be looking at any of this time at all. It's
22 just frightening. There's no way this could happen.
23 No. Look at the individual. Well, I don't believe they
24 ever did look at the individual. I don't believe these
25 charges were ever appropriate for 34 files on a

1 computer, 32 of which had never been looked at, never
2 been viewed, never been opened. And two that he said
3 that he didn't know what they were, but they were
4 inappropriate; he deleted them. And that's what he told
5 the government. And guess what? They were in the
6 deleted trash pile.

7 At that time he met -- and he's always been
8 taught to respect law enforcement. And things out of
9 this trial came out that surprised me. He met with, I
10 believe, Special Agent Pape in the Toledo office -- or
11 excuse me, the Lima office where he was given his
12 rights, and he was given his video statement, signed,
13 dated, and printed out for him in that office. Alex
14 later remembers that there's a video camera in that
15 case, and he said there was no video. Well, guess what?
16 We asked for that video, and we can't get it. Oh, I
17 made a mistake. I lied on the document when I typed it.
18 I'm sorry to say lied, Your Honor, but I believe that's
19 what it is. It's a laziness and a mistake that he
20 checked the wrong box. But political correctness aside,
21 it's wrong. He also supposedly signed a statement that
22 day. We don't know when it was signed or what was in
23 that statement because we never received a copy of it.
24 And when we finally did, all it had was a date stamp on
25 it, no time stamp.

1 My son made a mistake. He did not read the
2 entire document, and he signed it anyway. That was a
3 mistake. But he did read the first part of it, first
4 several sentences, and it never mentioned anything about
5 child pornography in that at all. That is beared [sic]
6 out by two polygraph examinations he took by Bill Evans
7 in Akron, Ohio that he never once told any of that
8 information in that statement to anybody. He never once
9 downloaded or knowingly looked at child pornography.
10 Two polygraphs that were submitted to the government,
11 and they knew that. Special Agent Pape said he took a
12 polygraph test, and it was inconclusive. And this is
13 what shocked me. But he told -- during the pretrial
14 hearing that he told Alex he was responding to those
15 polygraphs, and that wasn't true because it was
16 inconclusive. That's when I found out that the FBI
17 during an interrogation can lie. I don't agree with
18 that. I understand they've got a tough job. But I
19 never thought agents of our government could lie to
20 individual citizens. Case aside, laws, we accept that.
21 But in a court of law, in this trial in front of a jury
22 he was asked, Did you ever lie to Alex Cook? And he
23 said, No. And that's wrong. That's wrong. He also
24 said that he printed -- when he printed out his two
25 rights statements in his video statements he gave them

1 to him. He then said in a court of law he didn't have a
2 printer to print out his statement to make. Your Honor,
3 if he printed out those two, how could he not print out
4 that one? I believe that also was a lie. When he got
5 caught -- and he said in the suppression hearing that he
6 never -- that that was Alex's words. Then later in the
7 statement he said, well, no, that was my paraphrasing.
8 It wasn't Alex's words. He paraphrased the entire
9 thing. That was another inconsistency in his testimony.

10 And, Your Honor, you made a statement, and I
11 hope you hold to, and I believe you will because you are
12 a very honorable man, that when they get into an
13 interrogation room that everything goes astray. Like
14 you said --

15 THE COURT: I had a session afterwards which
16 the agents and the government will never forget. I made
17 my views absolutely clear. The United States, Federal
18 Bureau of Investigation, when they deliberately fail to
19 record interviews when the Toledo Police Department
20 does, Lucas County Sheriff does, the Ohio State Highway
21 Patrol, so far as I'm aware, practically every other law
22 enforcement agency in this state does, they're cheating.
23 And that's how I feel about it. They come into court
24 wearing the Special Agent's badge and reputation. And
25 when they fail to record, as can easily be done, they're

1 taking advantage of that. And I understand that. And I
2 have made that indisputably clear. And I have told the
3 government and the FBI, the next time somebody stands
4 trial and they have failed to record the interview, I am
5 going to instruct the jury in as plain, as blunt terms
6 as humanly possible, in a way that would cause them to
7 weigh that failure, and take that into account, and to
8 hold it against the Federal Bureau of Investigation. I
9 feel very strongly about that, Mr. Cook. I really do.
10 I'm using a very blunt term. They cheat when they fail
11 to record every conversation.

12 This is the second occasion where conviction
13 has been obtained on the basis of an unrecorded
14 conversation. The first time was a lawyer of high
15 standing in this community. And he told a story that
16 diverged from that of the FBI. And the jury is here to
17 believe -- yeah.

18 I said, candidly, I don't believe your son,
19 aside from all of that. Okay. I understand your views.
20 He is your son. And it's incredible for you that he
21 could have committed the acts which the jury found him
22 guilty. But the jury has. And the Congress of the
23 United States has said to me I must impose at least a
24 five-year term. I find that hideous. Where does the
25 Congress of the United States -- it has the authority

1 certainly, but the wisdom that is necessary to treat
2 each defendant, no matter his crime, no matter how
3 guilty, no matter what doubt one might have about his
4 guilt and the accuracy of the jury's verdict, where does
5 it get the wisdom to assess on everybody convicted of
6 the same crime, regardless of circumstances, regardless
7 of prior criminal involvement, regardless of personal
8 characteristics, all the things and all else that we as
9 judges have to take into account and must take into
10 account in trying to craft the sentence? Congress has
11 been elected by the people and therefore, at least in
12 theory, is expressing the will of the people that that's
13 what we have to do in some select set of cases. And
14 that is a view with which I disagree absolutely.

15 I am far from infallible. And my judgment,
16 quite properly, is going to be questioned in this case
17 on appeal. That's fine. I welcome an appeal. And if
18 I erred either in my decisions before or during trial,
19 or at this proceeding, I should be reversed. And that
20 never bothers me. That's what the Courts of Appeal are
21 here for, because judges are not infallible. But when
22 it comes time to impose a mandatory minimum sentence,
23 that's not right. But that's what, in this area,
24 Congress and the law require.

25 MR. JERRY COOK: I understand that, Your

1 Honor. Thank you.

2 THE COURT: So I agree with you in that
3 regard.

4 MR. JERRY COOK: Also, I'd like to say, Your
5 Honor, when you think about that and you think, well,
6 video camera, I just did my own quick numbers, \$250 for
7 a video camera.

8 THE COURT: Mr. Cook, I understand that.
9 Absolutely. And that's part of it. How much? Go to
10 Radio Shack and get a tape recorder.

11 THE DEFENDANT: They could outfit the entire
12 FBI with less than we spent in one minute of our
13 national budget.

14 THE COURT: As I say, you're welcome to
15 obtain a transcript of my remarks if you want. I think,
16 if nothing else, you'd be a bit gratified to hear me say
17 it. I've basically condensed it right now. But I mean
18 what I say. The next time the Federal Bureau Of
19 Investigation comes before me and they don't have a
20 recording of the defendant's statement, I'm going to
21 tell the jury exactly what I think about that conduct.
22 If that means a guilty person goes free, so be it.
23 Shame on them for taking advantage of the stature that
24 they have, that they've earned over the past nearly 100
25 years of their existence. That's exactly what they're

1 doing. They know what they're doing, and they still do
2 it. I told them they shouldn't be doing it ten years
3 ago after that lawyer's case. Of course, they paid no
4 attention. They're probably paying no attention to me
5 right now. But in this courtroom in front of me, the
6 jury will pay attention.

7 MR. JERRY COOK: I appreciate that, Your
8 Honor. Unfortunately, that does nothing for my son.

9 THE COURT: I understand that. That may be
10 rectified on appeal. I don't know. At the point of
11 appeal, I did not give that instruction. I'm not sure
12 Ms. Kelley asked for it. I can't recall our
13 conversations. They're on the record. But in any
14 event -- and there candidly is sufficient fair doubt
15 about the accuracy of any jury verdict. As I say, the
16 jury chose not to believe your son. And the FBI agent's
17 testimony was crucial in his conviction.

18 Despite what I said, and this is why we have
19 juries and not judges. Despite what I've said, I did
20 not disbelieve the agent's testimony, nor did the jury.
21 But I'm sure if you look at the transcript of this
22 trial, my own views were masked for the jury. That's my
23 job. I tell them a number of times, don't try to think
24 how I would decide this case. That's not my job. It's
25 your job to decide it on the facts and laws as they come

1 to you.

2 Go ahead. I'm sorry.

3 MR. JERRY COOK: Also, Your Honor --

4 (Discussion had off the record.)

5 THE COURT: Excuse me, Mr. Cook. I'm going
6 to take whatever time is needed and desired, but my
7 successor, who was just confirmed and his commission was
8 just signed by the President, has asked me to swear him
9 in at noon. This takes precedence. I'm trying to tell
10 people, I'll get there.

11 MR. JERRY COOK: I will try to be briefer,
12 Your Honor.

13 THE COURT: No. I tell you only -- I've
14 been having these little sidebars.

15 MR. JERRY COOK: The multi tasks we do
16 today.

17 Your Honor, also as part of this, and which
18 surprised me, is when we did hire Ms. Kelley, we did do
19 polygraphs. There was reason to believe from our
20 polygraph expert that the polygraph that the FBI did was
21 not even a valid polygraph. That was brought up in the
22 suppression hearing that they did a polygraph. We asked
23 for that information, and we were told by the Assistant
24 United States Attorneys that we weren't entitled to that
25 information about all the reports and the underlying

1 reports of a polygraph exam so our expert could evaluate
2 those. I do not believe that is fair.

3 THE COURT: The thing is, the polygraph is
4 simply not admissible evidence.

5 MR. JERRY COOK: Not to the Court, but can
6 it go to the credibility, even if there was a valid
7 polygraph done when the agent said there was?

8 THE COURT: No. The door is shut to
9 polygraph evidence. The law is clear and unequivocal on
10 that.

11 MR. JERRY COOK: Okay.

12 THE COURT: And a prosecutor may but need
13 not take polygraph evidence into consideration in terms
14 of charging. That exercises prosecutorial discretion.
15 But jurors are never ever told anything about a
16 polygraph one way or the other, probably to preserve the
17 defendant's right against self-incrimination because of
18 the continuing doubt about the accuracy of those
19 machines and results. So that's --

20 MR. JERRY COOK: That was my understanding
21 too, Your Honor. But what we were more questioning was
22 there was a lot of suspect in the credibility of
23 statements made by Special Agent Pape in this case.

24 THE COURT: Well, still, the polygraph --

25 MR. JERRY COOK: This is basically whether

1 he was being honest.

2 MR. CRAWFORD: Your Honor, I'm going to
3 object to any further comments by Mr. Cook relating to
4 the credibility of the FBI or any of the witnesses that
5 testified at trial. This hearing is not about that.
6 This hearing is about --

7 THE COURT: I tend to agree. But I'll
8 let -- we're here, Mr. Cook, for purposes of sentencing.
9 Much of what you're saying or at least some portion of
10 it no doubt will be found in Ms. Kelley's briefs on
11 appeal.

12 MR. JERRY COOK: Yes. Yes, sir.

13 THE COURT: Quite candidly, the comments
14 that you are directing to me more properly are addressed
15 to the Court of Appeals.

16 MR. JERRY COOK: Yes, Your Honor.

17 THE COURT: But I understand your desire to
18 be heard. Okay. And that's what any Court most
19 fundamentally has to provide is the right to be heard.

20 MR. JERRY COOK: I'll wrap up with several
21 last points, Your Honor. One is also this is happening
22 to many young Americans. If you study around the
23 country, this is happening to them, and it's a sad
24 story, and a lot of this is coming from software
25 applications that are out there. LimeWire. I would ask

1 the Courts and the U.S. Attorneys do whatever they can
2 to shut these guys down.

3 THE COURT: LimeWire has been shut down.
4 Mr. Crawford, do you know? I'm pretty sure it is.

5 MR. CRAWFORD: There are a variety of
6 programs that can be used for file sharing. LimeWire, I
7 think, was shut down.

8 THE COURT: They pop up like dandelions in
9 the spring.

10 MR. JERRY COOK: FrostWire. I know it's
11 hard to do that, but to get these guys shut down so this
12 doesn't happen to anybody else.

13 Also, Your Honor, I understand how child
14 pornography is horrific to those who did it and were
15 involved in it, who experience the pornography and how
16 it impacts them for many years in the future. These
17 young people experience it all. My comment to come here
18 too is if the government -- they know these files. They
19 have what they call, I guess, the hash of these files.
20 If we can hack the Iranian nuclear program, why can't we
21 write a virus to go out and start destroying these files
22 around the world so these individuals are not
23 continuously being abused and try to remove as many of
24 these pictures as we can. That's just something that
25 seems to be very simple to do and get rid of these

1 pictures out there so these individuals are not being
2 exposed to the ridicule and stuff again, Your Honor.

3 Your Honor, I will say to wrap up that I
4 know my son, I know his heart --

5 THE COURT: Let me say something that's a
6 bit off track in terms of the simplicity of, to mix a
7 metaphor, putting a stake in the heart of this
8 multi-headed monster. I was in Laredo, Texas last week
9 for sentencing, spent a couple hours at the border
10 inspection stations at a couple bridges in Laredo.
11 Immigration is the same kind of thing. It's this
12 massive problem, and people come up with these solutions
13 that appear simple: Let's build a fence, let's do this,
14 do that. Well, at one crossing point down there 5,000
15 pedestrians, 4,000 vehicles, and 150 busses pass through
16 each day and 1,100 rail cars. That's not a commercial
17 facility. So I would only say in response that as with
18 that, it was an eye-opener to me to realize what appears
19 to be an easily implemented and potentially successful
20 solution, who knows. I mean, I would agree with you
21 that one would hope that our government is doing
22 everything it can to engage in the kind of cyber warfare
23 against the purveyors of this material, but -- so I
24 agree with you. I'm just not so sure that, like the
25 immigration problem, that it's amenable to easily

1 implemented and totally effective solutions.

2 But anyway, go ahead.

3 MR. JERRY COOK: I understand. Our
4 government, it's difficult. I don't want to see these
5 victims of this suffer. That's why if we can do
6 anything about that, I think we should.

7 I know the heart of my son. I've never been
8 more proud of him. I taught him to come up and tell the
9 truth and to do that. I think he said in his statement
10 he could not come in this court and lie. That's what he
11 said since day one.

12 I understand the mandatory minimums, Your
13 Honor, and I disagree with those, and I will do
14 everything in my power to try to get those changed in
15 Congress because taking, as you said, taking it out of
16 your hands, taking it out of the Justice Department's,
17 it's wrong. It's absolutely wrong, Your Honor, and we
18 will do everything about it. I know my son did not do
19 this. I will go to my dying day defending my son for
20 this.

21 But, Your Honor, the computer forensics that
22 we need, we didn't do it during the last part of this
23 because, quite honestly, Your Honor, we're out of money.
24 We're \$200,000 into this. I have no money. He has no
25 money. That's why we didn't do anything after

1 post-conviction, because we just couldn't afford it. We
2 finally came up with \$2,500, and that's gone here in
3 several weeks just writing the brief to get this to the
4 Court.

5 THE COURT: Well, your son is entitled to
6 appointed counsel on appeal. And if desired, I and the
7 Sixth Circuit will certainly appoint counsel.

8 MR. JERRY COOK: If I can request, we've
9 talked to attorney Jeff Gamso. We'd like him to do
10 that. We understand it may not be out of your hands to
11 do that.

12 THE COURT: No, I can appoint him, can't I,
13 Amy?

14 I'll recommend to the Circuit. Absolutely.
15 He's very capable and very vigorous, just like Ms.
16 Kelley.

17 MR. JERRY COOK: That's why we went to him.
18 But, Your Honor, we have no money. He's been willing to
19 take it if the Court would file that.

20 THE COURT: I'll take care of it.

21 MR. JERRY COOK: We appreciate that, Your
22 Honor. And we also need this forensics. It's key. So
23 many things have been discovered, as the U.S. Attorney
24 just said. This is the first time. We're learning.
25 We just don't know where to go, what to do. If we can't

1 look at that computer again, we only had several days to
2 look at it. It just wasn't enough time to be prepared
3 for trial. I'd ask you to reconsider to let him have
4 access to that.

5 THE COURT: That's what I'm doing.

6 MR. JERRY COOK: I'd appreciate that.

7 THE COURT: It's the other motion I'm being
8 briefed. Why don't you brief that one too. I'll
9 withhold judgment. Go ahead and file a written
10 response, Mr. Crawford, to the motion on the computer,
11 and Ms. Kelley can reply. I hope to get a decision by
12 mid August at the latest.

13 MR. JERRY COOK: I'd just like to thank Your
14 Honor for what you've done in this. I know it's a heavy
15 responsibility you bear. I'd like to thank Ms. Kelley
16 for what she's done, tell my son I love him dearly.
17 U.S. attorneys, I know they have a tough job, and
18 they're in a no-win situation as well. But, Your Honor,
19 I just don't think this is just. And I think you
20 realize that as well, and we appreciate anything you can
21 do for us and for Alex. Thank you very much.

22 THE COURT: Ms. Kelley, anything further on
23 behalf of your client before I ask Mr. Cook if he has
24 anything that he wishes further to say?

25 MS. KELLEY: We're ready to proceed, Your

1 Honor.

2 THE COURT: Mr. Cook, Ms. Kelley read your
3 letter, but you still retain the right to speak to me on
4 your own behalf.

5 THE DEFENDANT: No, sir.

6 THE COURT: Mr. Crawford, anything further
7 from the government?

8 MR. CRAWFORD: No, Your Honor.

9 THE COURT: Formally to pronounce sentence,
10 pursuant to the Sentencing Reform Act of 1984 and 18
11 U.S. Code, Section 3553(a), it's the judgment of this
12 Court that the defendant, Alex David Cook, be and hereby
13 is committed to the custody of the Bureau of Prisons to
14 be imprisoned for a term of 72 months on each Counts 1
15 and 2 and a term of 24 months on Count 3, all to be
16 served concurrently.

17 Upon release from imprisonment the defendant
18 shall be placed on supervised release for a term of ten
19 years each, Counts 1, 2, and 3, all to be served
20 concurrently.

21 Within 72 hours of release from the custody
22 of the Bureau of Prisons, you shall report in person to
23 the U.S. Probation Office in the district in which you
24 are released, or the Pretrial Service and Probation
25 Office in this district.

1 There will be no fine. You have to pay a
2 special assessment of \$300 which is due immediately.
3 How soon can you pay that? July 2?

4 THE DEFENDANT: I could probably be able to
5 do that, Your Honor.

6 THE COURT: Okay. I'll make it by July 2.
7 While on supervised release you shall not commit another
8 federal, state, or local crime. Shall not illegally
9 possess a controlled substance. Shall comply with the
10 standard conditions adopted by this Court, which you
11 will be made known -- aware upon beginning supervised
12 release, and the following additional conditions: You
13 shall not possess a firearm, ammunition, destructive
14 device or dangerous weapon. For the rest of your life
15 you can never lawfully again possess a firearm, even for
16 hunting or sport or recreational activities. Simply
17 absolutely prohibited. While on supervised release you
18 shall diligently seek to obtain and if you obtain
19 diligently seek to maintain lawful, gainful employment.
20 And you shall keep the probation office -- Pretrial
21 Service and Probation Office fully informed about your
22 activities in that regard. You shall likewise provide
23 the probation officer with access to any requested
24 financial information. For the remainder of your life
25 you, unless the laws change, you'll have to comply with

1 the terms and conditions of the Sex Offender
2 Notification Act, the Adam Walsh Act. You also have to
3 comply with the Minor Protection and Restriction Program
4 as directed by the probation officer. If you have
5 access to a computer of any sort under any circumstance
6 at any location it will be at the sole direction and
7 control of the U.S. Pretrial Service and Probation
8 Officer. And you shall not access any computer in any
9 way at any time at any location for any purpose
10 whatsoever without the prior authorization of the
11 Pretrial Service and Probation Officer. While on
12 supervised release you shall commit your person,
13 residence, place of business, computer, and/or vehicle
14 to a warrantless search conducted and controlled by the
15 U.S. Pretrial Service and Probation Officer based upon
16 reasonable suspicion that you were in possession of
17 contraband or violation of a condition of release or
18 evidence of a violation of criminal law. You shall
19 notify the residents with whom you are living that the
20 premises may be subject to search pursuant to that
21 provision. You shall cooperate in the collection of DNA
22 as directed by the probation officer.

23 You're aware you do have a right to appeal
24 both your conviction and your sentence. I will let the
25 record show that I deem that you've filed a timely

1 notice of appeal and have done so orally through counsel
2 today; however, to protect your rights to appeal you
3 must file the written notice of appeal within 14 days of
4 today's date or you'll lose forever whatever right you
5 might otherwise have to challenge either your conviction
6 or your sentence. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And I meant what I said, if I
9 erred, I sincerely hope that the Court of Appeals
10 reverses me and gives you either a new sentencing
11 hearing or a new trial. And if the trial were to be in
12 front of me, I can assure you that I would avoid
13 whatever error may have led to reversal. And I would do
14 everything in my power, as I believe I did so far, to
15 give you a full and fair trial under the Constitution
16 and laws. So in the event you do secure reversal,
17 neither you nor your attorney should have any
18 apprehension that somehow I will hold that against you.
19 That would be a violation of my oath to uphold the
20 Constitution and laws of the United States to do
21 anything of that mean spirit and totally improper
22 response or thing to do.

23 To give you an understanding of my reasons
24 for the sentence I have imposed under Section 3553(a)
25 and the Sentencing Reform Act of 1984, I have considered

1 the nature and circumstances of the offense. This is
2 obviously a very serious offense. Nobody in this
3 courtroom disputes that for a moment. And that is why
4 it is punished severely. As I have indicated, like many
5 of my colleagues on the federal bench, the sentences
6 imposed for this conduct tend to be far too severe. I
7 have given far more severe sentences where the cases
8 involved defendants who committed violent sexually
9 abusive crimes against minors, served their time for
10 that, then come out and done this sort of activity.
11 However, as far as I am concerned, as far as I can tell,
12 you pose absolutely no danger to children of any kind
13 whatsoever. Whatever your motives were in engaging in
14 that activity which the jury found you guilty of, they
15 were at worst self-gratification. But nonetheless, so
16 far -- and your dad had a good thought. Maybe there's a
17 better way to do it, just as there's a much better way
18 to control gun violence in this country than sending
19 people to prison because they have a prior felony record
20 and have a gun, but that's what we do day in and day out
21 in this country. We don't always take the best way to
22 address serious problems. We don't in that regard,
23 perhaps we don't in this regard either.

24 I will recommend to the Bureau of Prisons
25 that you be placed in an institution which will protect

1 you, because the Bureau has an absolute right to protect
2 you. You're a young man. Prisons are places
3 unfortunately where there are predatory and truly
4 violent, evil people. And it's up to the Bureau of
5 Prisons, its responsibility to take all necessary
6 measures to protect your well-being and your welfare.
7 And to the extent that you ever have any apprehension in
8 that regard, I advise you to notify the prison
9 authorities and so that they're aware of whatever your
10 concerns and circumstances are and can take, as I hope
11 they do, the necessary measures to protect you.

12 I believe -- I realize that neither you nor
13 anyone else in this courtroom, except perhaps the
14 government, believe that the sentence is just. I hope
15 that it promotes -- enhances respect for the law. Its
16 primary purpose is not individual deterrence. I have
17 no doubt that you will live the rest of your life as a
18 law-abiding citizen, as you did clearly until this issue
19 and problem. But its primary purpose is public
20 deterrence. I hope that the government publicizes this
21 sentence, not to shame you or make life for your family
22 and your friends and your relatives in Fredericktown and
23 elsewhere any more difficult than it's been for the past
24 year or so, but simply so that other people who might be
25 tempted out of curiosity or whatever to do this sort of

1 stuff realize the serious consequences of doing so. The
2 purpose of my sentence is almost exclusively public
3 deterrence.

4 Let me say one final thing. As devastating
5 as this whole event has been for you particularly and
6 for your family and your friends, and as incredible as
7 it is, you are a young man. You will still be a young
8 man when you go home, with the help of the probation
9 office, and that's what they're there for. You should
10 be able to get yourself back on two feet and headed in
11 the right direction for the rest of your life. I urge
12 you, while in the custody of the Bureau of Prisons, to
13 take every opportunity that you can to further your
14 education and that you return -- that you continue the
15 college career that this has interrupted. It may seem
16 like much of your life will be past by the time you come
17 home, but it really is true that you will still be a
18 very young man, and all of your life will lie ahead of
19 you. So I sincerely hope that you take every
20 opportunity and advantage of every opportunity to move
21 forward and to put this and what it has caused to you
22 and your family behind you. Despite what I said
23 earlier, I wish you well. And this is simply a very
24 tragic situation. And I wish you well.

25 Does any party have any objection to any

1 part of these proceedings not previously made?

2 MR. CRAWFORD: Your Honor, for the record I
3 would object to the variance from the guideline
4 calculated in the presentence report.

5 THE COURT: Ms. Kelley, any objection to any
6 part of the proceedings not previously made?

7 MS. KELLEY: Not at this point, Your Honor.

8 There is one other matter I would like to
9 raise. It has to do with the date for my reply brief on
10 the two motions. July 4th falls during that window of
11 time. Could I have at least until the 12th?

12 THE COURT: That's no problem.

13 That will conclude this proceeding.

14 (Concluded at 12:16 p.m.)

15 - - -

16 **C E R T I F I C A T E**

17

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled
20 matter.

21

22 _____

23 Tracy L. Spore, RMR, CRR

24

25

Date